IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4557 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAGATI YUVAK VIKAS MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4557 of 1993

MR NK MAJMUDAR for Petitioner No. 1

MS DS PANDIT A.G.P. for Respondent No. 1-3

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/08/2002

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the decision of respondent no.2 refusing the approval for starting a school in a village know as Dungarpur in the

District of Panchmahals. The petitioner is a Trust registered under the provisions of Bombay Public Trust Act and a certificate of registration dated 23rd August, 1990 is annexed to this petition at annexure-C.

1.1. The petitioner - Trust made an application to start a school in the village of Dungarpur to respondent no.2 and requested the Board to grant necessary approval for the said purpose. The respondent - Board after taking into consideration the material placed before by the petitioner in support of its application came to the conclusion that in the instant case such permission cannot be granted. While turning down the application of the petitioner, respondent no.2 found that the petitioner has not produced any proof of its financial stability; that the petitioner does not have any building which can be used for the purpose of school building; that the building which has been proposed to be used for school does not have adequate number of rooms; that the building is not fit even from the point of view of health of the students and there is no need to have a school in the said area; that the proposed school is likely to create unhealthy competition and lastly that considering the small population of the village there is all probability that the school may not have adequate number of students. The petitioner was also intimated while passing the order rejecting the approval by respondent no.2 that it can prefer appeal against the said order under the provisions of Section 31 (10) of the Gujarat Secondary Education Act. The said order of respondent no.2 is dated 6th August, 1991.

1.2. This order of respondent no.2 was challenged by the petitioner in appeal before the Secretary Department of Education, Government of Gujarat. The appellate forum vide order dated 4th February, 1993 again took the material produced by the petitioner alongwith the order of the respondent - Board into consideration and it came to the conclusion that the impugned order was proper and it did not require any interference in appeal. The petitioner has, therefore, challenged both these orders namely order of respondent no.1 as well as respondent no.2 in this petition.

2. Mr.N.K. Majmudar, learned counsel for the petitioner submits that the authorities below have not properly appreciated the material produced by the petitioner in support of its claim. He has further submitted that though the Trust was having adequate finance, and sufficient proof in that regard was produced before the respondent - Board, the same was not taken

into consideration and that has resulted into miscarriage of justice. He has lastly contended that, since the material produced by the petitioner is not properly considered the same must be remanded back to the appellate authority for reconsideration and to deliver its judgment afresh.

2.1. Having gone through the entire record of the petition and having carefully considered the submissions made by Mr.Majmudar it appears that the conclusions reached by the authorities below namely respondent no.1 and 2 are proper. The first and foremost requirement for starting a school is to have appropriate and suitable building for housing the school and secondly the management of the school has to have adequate funds to manage the affairs of the school and to look after the needs of children studying in that school. Moreover, even from the point of view of the health of the children the building should be such that it may not create hazard to health of the children studying there. All these factors are found missing in the case of the petitioner. Apart from that the authorities below have also found that if permission is granted to start a school it is likely to create unhealthy competition not only that but considering the fact that the concerned village has a population of only 3000 people, the school may not have adequate number of students who can be admitted to the said school. In my opinion, these are the relevant factors which have been properly taken into consideration by respondent no.1 as well as respondent no.2. If this is the state of affairs, the application of the petitioner is rightly rejected. In view thereof, this petition does not have any merit and it deserves to be dismissed. The petition is, therefore, ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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